Supreme Court, U.S.
FILED

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No.

In the

Supreme Court of the United States

Bill J. Cory,
Petitioner

v.

Doris Fahlstrom,
Thomas M. Tuggle, Judge
Guy R. Steier,
Patrik W. Neustrom,
Samantha P. Angell, and
Dana Brewer,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
For the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

Bill J. Cory, Pro Se
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QUESTIONS PRESENTED

1. Whether the Court of Appeals applied the proper standard to invoke the *Rooker-Feldman* Doctrine to bar the Petitioners civil rights claims under 42 U.C.A. §1983 when the cause of action was a lack of jurisdiction of the state court in violation of the Due Process Clause of the Fourteenth Amendment.

2. Whether the question of personal and subject matter jurisdiction of the state court must be determined before the *Rooker-Feldman* Doctrine can be invoked.

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Appendix A is found in the Court record. Appendices B and C are attached to this document.

The 12 November 2003 unreported opinion of the Court of Appeals for the Tenth Circuit whose judgment is herein sought to be reviewed is reprinted in attached Appendix B, B-1. The Memorandum Order of the United States District Court for the District of Kansas entered 3 April 2003 is reprinted in Appendix B-4. The prior Memorandum and Order of the United States District Court for the District of Kansas entered 12 February 2003 is reprinted in Appendix B-9.

JURISDICTION

The Order and Judgment of the Court of Appeals for the Tenth Circuit was entered 12 November 2003. This Petition is timely under 28 U.S.C. § 2101 (c). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 42 U.S.C. § 1983; K.S.A. 60-302, 60-303 (b) and (c), 60-304(a), 60-308 (a), (b) and (e), and 60-312 (a) and (b) are reprinted in relevant part in Appendix C.

STATEMENT OF CASE

Personal jurisdiction was found in the United States District Court for the District of Kansas under 28 U.S.C. § 1391 because the claim arose, and each Respondent is found, resides, and transacts business in the State of Kansas.

Jurisdiction over the subject matter was found pursuant to 28 U.S.C. § 1331, 1332, and 1343; and under the doctrine of pendant jurisdiction. The Petitioner is a resident of Flagler County, Florida.

The claim arose in this Honorable Court when the District Court of Kansas invoked the *Rooker-Feldman* Doctrine to grant Summary Judgment to the Respondents, effectively dismissing the Petitioners civil rights claim under 42 U.S.C. § 1983. The Petitioner had filed suit for damages against the Respondents citing the lack of personal and subject matter jurisdiction of the state court, among other allegations. The case was never decided on the merits and the court of Appeals for the Tenth Circuit merely affirmed the decision of the lower court.

The Petitioner was never served process pursuant to the Statutes of the State of Kansas for the service of process when the suit was filed against him in state court. **Therefore he was never summoned into the court, and he stayed home for the next ten (10) months, never making a general appearance in the court.** During this time the state court issued a Default Judgment, an attachment order directing the sheriff to seize and sell his farm at public auction, and a show cause order for contempt of court. At the time the state court was taking the forgoing actions against him, the Petitioner practiced due diligence in the law by making special appearances in the Court of Appeals for Kansas and the Supreme Court of Kansas, all to no avail.

Approximately three (3) weeks prior to the land being sold by the sheriff, the Petitioner retained counsel to delay the sale of the land until his Appeal was decided by the Court of Appeals of Kansas. The attorney stated that the only way to stop the sale of the land was to pay money. An arrangement was made with the Respondents whereby four hundred thousand dollars ($400,000.00) would be paid into the court.

The petitioner's attorney told him that he would have to be in court to pay the money, and be present because of the Show Cause Order for Contempt of Court. Three (3) days before the land was to be sold, the Petitioner made a special appearance in the state court and the four hundred thousand dollars ($400,000.00) was paid. At that time, and without having been informed, he was required to sign several legal papers and give testimony. The sole purpose for paying four-hundred thousand dollars ($400,000.00) and the signing of papers was to avert the sale of the farmland and contempt of court proceedings.

The Petitioner has repeatedly requested that the Respondents furnish proof of service of process in his filings in special appearances in the appellate courts of Kansas, in his complaint in the District Court of Kansas and Opening Brief in the Tenth Circuit, and again in this writ. No proof of service in any court has ever been proffered. Respondents only reply has been that the Petitioner voluntarily and freely paid four-hundred thousand dollars ($400,000.00), and told the judge in testimony that is what he wanted to do. The unlawful use of the state attachment statutes to sell the Petitioners land and the contempt of court action caused the Petitioner to capitulate, and do what he felt he must do to survive. Judge Tuggle was part of the conspiracy, and the foregoing evidences coercion and intimidation on his part.

The state court judge issued an order rescinding the default judgment, settling the issue, and, in effect, attempted to make all their unlawful acts appear legal. The Petitioner does not have a state court judgment against him, and he was never a party to a suit in state court. He filed a cause of action for damages in the District of Kansas, stating that his civil rights had been violated under 42 U.S.C.§ 1983 and that the state court abrogated his right to due process under the Fourteenth Amendment of the Constitution.

The District Court of Kansas never applied the Rooker-Feldman Doctrine on the merits to the case, but rather made an arbitrary decision that the Rooker-Feldman Doctrine applied since it was a § 1983 claim involving a state court action. In order for the *Rooker-Feldman* Doctrine to apply, the court must rule that he was served process and that the state court had personal and subject matter jurisdiction. The lack of jurisdiction of the state court is his case-in-chief, and must be decided on the merits.

REASONS FOR GRANTING THE WRIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Bill J. Cory, the Petitioner herein, respectfully prays that a writ of certiorari issue to review the Order and Judgment of the United States Court of Appeals for the Tenth Circuit entered in this matter on 12 November 2003.

All courts, state and federal, rigorously adhere to the Rule of Law that they must have both personal and subject matter jurisdiction before commencing a judicial proceeding. After the Petitioners Notice of Appeal, the Tenth Circuit held the appeal in abeyance for a lack of jurisdiction and issued a show cause order. The Kansas District Court Judge requested that one Respondent, who has failed to respond to the Petitioners Motion for Summary Judgment, submit a Motion for Summary Judgment and the Petitioner to respond. The case had been closed on 11 February 2003, but the District Judge entered a second order granting Summary Judgment to the defaulting Respondent on 3 April 2003 (B-4). This Summary Judgment, based upon this untimely response of the Respondent, satisfied the Tenth Circuits requirement for jurisdiction, and the appeal was allowed to proceed.

The Petitioners case-in-chief under 42 U.S.C. § 1983 is that the State Court lacked jurisdiction over his person

and the subject matter, and that he was denied procedural due process under the Due Process Clause of the Fourteenth Amendment to the Constitution. Both the Kansas District Court and the Tenth Circuit set aside the state court jurisdictional requirement as if it were irrelevant. Given that all courts conform to these jurisdictional requirements, the Kansas State Court Judge should be held legally responsible for failure to have jurisdiction. The Cloud County District Court Judge Tuggle made his own law, and adjudged that he had personal jurisdiction when it was self-evident from the record before him that the Petitioner had never been served process according to the Statutes of the State of Kansas. The District Court of Kansas and the Tenth Circuit refused to consider the state court lack of jurisdiction with the corresponding denial of procedural due process, and its consequential bar of the *Rooker-Feldman* Doctrine. For this most important reason, and if for no other reason, Certiorari should be granted the Petitioner.

The Petitioner filed his § 1983 claim for the first time in the District Court of Kansas. Due to lack of jurisdiction, he was never a party to a suit in state court and his choice to forgo optional state review failed to convert the state court actions against him into a full and fair opportunity to litigate. The Petitioner had the right to choose to litigate in any court with jurisdiction. He chose the District Court of Kansas and his claims are properly before the federal courts. *Johnson v. DeGrandy*, 512 U.S. 997, 105, 106 (1994). The Petitioner was not a party in state court, he is not challenging a state court decision, and his case is not inextricably intertwined with a state court decision. Rather, the Petitioner filed suit for damages under 42 U.S.C. § 1983 for denial of procedural due process under the Due Process Clause for deprivation of his Constitutional Rights. Therefore the *Rooker-Feldman* Doctrine is inapt and does not apply.

When the Petitioner attempted to retain counsel for this suit, most said they did not know the law, but others would not accept the case because the Petitioner was suing four lawyers and a judge. They simply stated that the sitting judge and the defendants were of the same flock and the judge "would find some way to make you lose". That's exactly what happened. The Tenth Circuit is not applying the *Rooker-Feldman* Doctrine in conformance with the intent of the Doctrine as set forth by this Honorable Court. The Doctrine was instituted to prevent losers in state courts from using the Civil Rights Act to make an end-run around state court decisions. In this case, just the reverse is true. The Tenth Circuit courts are using the *Rooker-Feldman* Doctrine to circumvent trying bonifide civil rights cases.

The Tenth Circuit invoked the Doctrine in a manner contrary to its usage in other circuits, and this Honorable Court should grant certiorari to cause the Tenth Circuit to proceed with civil rights cases and refrain from denying § 1983 claims without just cause. The continued intentional barring of § 1983 claims will deal a severe blow to Civil Rights Act, and this Honorable Court should clarify the purpose and usage of *Rooker-Feldman* to the Tenth Circuit. The citizens with civil rights violations entering court in the Tenth Circuit deserve the same right to be heard as all other citizens.

The District Court of Kansas and the Tenth Circuit had jurisdiction under § 1983 to determine whether or not the state court had satisfied the jurisdictional requirements. All federal courts have jurisdiction under § 1983 to collaterally review state court actions and judicial decisions to protect the people from the unconstitutional deprivation of their rights under the color of state law.

> "Congress enacted § 1983 and its predecessor, § 2 of the Civil Rights Act of 1866, 14 Stat. 27, to provide an independent avenue for protection of

federal constitutional rights. The remedy was considered necessary because "state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights." *Mitchum v. Foster*, 407 U.S. 225, 240, 92 S.Ct. 2151, 2161, 32 L.Ed. 2d 705 (1972). See also *Pierson v. Ray*, 386 U.S., at 558-564, 87 S.Ct., at 1219-1222 (dissenting opinion) (every Member of congress who spoke to the issue assumed that judges would be liable under § 1983).

Subsequent interpretations of the Civil Rights Acts by this Court acknowledge Congress' intent to reach unconstitutional actions by all state actors including judges. In *Ex parte Virginia*, 100 U.S. 339, 25 L.Ed. 676 (1880) § 4 of the Civil Rights Act of 1875, 18 Stat. 336, was employed to authorize a criminal indictment against a judge for excluding persons from jury service on account of their race. The Court reasoned that the Fourteenth Amendment prohibits a State from denying any person within its jurisdiction the equal protection of the laws. Since a State acts only by its legislative, executive, or judicial authorities, the constitutional provision must be addressed to those authorities, including the State's judges. Section 4 was an exercise of Congress' authority to enforce the provisions of the Fourteenth Amendment

> and, like the Amendment, reached unconstitutional state judicial action.
>
> The interpretation in *Ex parte Virginia* of Congress' intent in enacting the Civil Rights Acts has not lost its force with the passage of time. In *Mitchem v. Forster*, supra, the Court found § 1983 to be an explicit exception to the anti-injunction statute, citing *Ex parte Virginia* for the proposition that the very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights—to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.' "407 U.S., at 242, 92 S.Ct., at 2162.
>
> ..."We remain steadfast in our conclusion, nevertheless, that Congress intended § 1983 to be an independent protection for federal rights and find nothing to suggest that congress intended to expand the common-law doctrine of judicial immunity to insulate state judges completely from federal collateral review."

(Emphasis added) *Pulliam v. Allen*, 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565, (1984). The federal courts have original jurisdiction over all § 1983 claims pursuant to 28 U.S.C. § 1343. The federal courts right of original jurisdiction affords the court the authority to re-try state court § 1983 claims. If a party is defeated in a state court § 1983 claim, he can retry the exact same case in federal court. Several citations are available to the Plaintiff in support of the foregoing, however he prefers a writing of Justice O'Connor, "...Glover filed this § 1983 action

against petitioners in Federal District Court. His factual allegations were identical to those made in the state court petition – indeed Glover simply appended copies of papers filed in state court to his federal – court complaint". *Tower v. Glover*, 467 U.S. 914, 104 S.Ct. 2820, 81 L.Ed.2d 758, (1984). The Tenth Circuit courts declined to fulfill their duty, and attempted to avoid responsibility for this civil rights action by invoking the *Rooker-Feldman* Doctrine. Certiorari should be granted the Petitioner.

The Petitioners case-in-chief is that he was never served the Summons and Petition, and the Amended Petition pursuant of the Statutes of Kansas for service of process. He never made a general appearance and was never hailed into the Cloud County District Court. Therefore the Cloud County Court failed to have personal jurisdiction over him.

The Respondents have the burden of proof by prima facie evidence that the Petitioner was served process.

Therefore, the Petitioner requests that the Respondents provide this Honorable Court with Proof of Service of Process in the form of a Return of Summons, Acknowledgement of Summons, or Certified Mail Return Receipt from the Cloud County District Court Record (C-5).

DENIAL OF PROCEDURAL DUE PROCESS (42 U.S.C. § 1983)

The Plaintiff filed a Motion to Dismiss for Failure to Serve Process and to Award Sanctions Pursuant to K.S.A. 60-211 in the District Court of Cloud County, Kansas on 20 April 2000 (Doc. 40, Ad. 1). The Plaintiff moved the court to dismiss the petition filed 19 January 2000 (Ad. 2) pursuant to K.S.A. 60212 (b) for: (1) Lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, and

(5) insufficiency of service of process. If a state has statutory method for serving process, that method must be followed. There is no chance to speculate whether some other mode will not answer as well. *Amy v. City of Watertown,* 130 U.S. 301, 316-17, 9 S.Ct. 530, 535-36, 32 L.Ed. 946 (1889). The Respondents had notice that process had not been served, but failed to perfect service of process according to the Statutes of Kansas.

The purported summons (Doc. 40, Ad.1, Exh. 2) the Plaintiff received by first class mail, lacked the signature of the clerk, the court seal, the date, and case number. K.S.A. 20-303 mandates that the clerk of court use the seal of the court to authenticate all process and all official acts. K.S.A. 60-302 states the summons shall be signed by the clerk, under the seal of the court, and dated the day it is issued (C-1). In *Lindsay v. Comm'rs of Kearney Co.,* 56 K. 630, 44 P. 603 the Supreme Court of Kansas stated:

> ..."The summons is the process by which parties defendant are brought into court, and it is important, therefore, that the statutory requirements respecting the same be substantially observed. It is provided that "the summons shall be issued by the clerk,.....shall be under the seal of the court from which the same shall issue, shall be signed by the clerk, and shall be dated the date it is issued".....the statutory requirement that the summons shall be signed by the clerk is imperative, and it cannot be safely disregarded. The signature of the clerk is equally as important to the validity of the summons as is the seal, and with respect to that this court has expressly decided that "if the summons was issued without a seal it would be void, and a judgment founded

> thereon a nullity". (*Dexter v. Cochran*, 17 Kan. 447.)"

All summonses must be authenticated by the seal of the court and the signature of the clerk of court in order to validate the summons. *Dexter v. Cochran*, 17 Kan. 447; *Kelso v Norton*, 74 K. 442, 87 P. 184; *Taylor v. Buck*, 61 K. 694, 60 P. 736. Additionally, Defendants are required to be provided with a true and correct copy of the summons on record in the court. *Dresser v. Wood*, 15 K. 344. The legally defective summons precluded substantial compliance with any of the methods prescribed for the service of a summons in K.S.A. Chap. 60, Art. 3. Most importantly, the Plaintiff was never served process in accordance with any of the Kansas statutes for service of process, K.S.A. 60-303, 304, or 308 (C- 2).

It is not enough to be aware that you are being sued, but the server must be in substantial compliance with one of the statutory methods for serving process. K.S.A. 60-204 states in part:

> "in any method of serving process, substantial compliance therewith shall effect valid service of process if the court finds that, notwithstanding some irregularity or omission, the party served was made aware that an action or proceeding was pending in a specified court in which his or her person, status, or property were subject to being affected."

Without substantial compliance, the clause "the party was made aware that an action or proceeding was pending is not triggered. From *Briscoe v. Getto*, 204 Kan. 254, 462 P.2d 127:

> "There was no method of statutory service that was substantially complied with. The provision for ignoring the irregularities or

> omissions, if the trial court finds that the party was aware that an action or proceeding was pending in a specified court in which his person, status, or property was subject to being affected, was not brought into operation."

Service of process on the Plaintiff shows a postal return receipt marked unclaimed and a certificate of mailing for a first-class letter. In *Bray v. Boyles*, 228 Kan. 481, 618 P. 2d 807; *Haley v. Hershberger*, 207 Kan. 459, 485 P. 2d. 1321; *Briscoe v. Getto*, 204 Kan. 254, 462 P. 2d. 127; *and Dunn v. City of Emporia*, 643 P. 2d 1137, it was clear that all defendants were given actual notice that suit had been filed, but the court found that service of process was defective. In the case under decision, one cannot even pretend that substantial compliance with any statutory method for service of process on the Plaintiff was perfected.

The **right to procedural due process is absolute** and does not depend upon the merits of substantive assertions. *Carey v. Piphus*, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed. 2d 258. The Petitioner was denied procedural due process when the state court stated that it had personal jurisdiction over the Plaintiff, in spite of the fact he had not been served process and haled into court. The plaintiff believed he had the Protection of the Kansas statutes for service of process and the safeguards imposed by the Due Process Clause of the Fourteenth Amendment, and therefore, could not be harmed. If the Defendants had filed an Alias summons and perfected service, the plaintiff would have entered the court and defended. The plaintiffs reliance on his right to procedural due process was in error since Judge Tuggle disregarded the Kansas statutes for service of Process and the Due Process Clause, and the Plaintiff was subsequently injured. The direct cause of the Plaintiffs injury was a denial of

procedural due process. Failure of the federal court system to determine the merits of his case simply diminishes the value of the courts. In the turmoil of the world today, this great society known as the democracy of the United States needs a court system that stands as a bulwark for every citizens rights. The United States Supreme Court is the court of last resort, and this Court alone has the final responsibility to enforce the Law of the Land for the protection of the people.

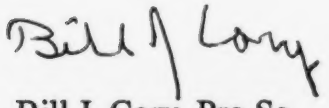
The Petitioner addressed the Pattern of Racketeering Activity in Supreme Court No. 87-1854, which, by copying, became the winning argument in *H.J. Inc. et al. v. Northwestern Bell Telephone Co. et al.* Supreme Court No. 87-1252. He refiled in the same District Court of Maryland and brought his case to a successful conclusion. In the present case, there is no decision on the merits. Such a refiling is a waste of judicial resources, and the Petitioners time and money. Hopefully the foregoing will be unnecessary, and the Petitioner prays this Honorable Court will cause the Tenth Circuit to decide the present case on its merits.

There is no parole evidence, the case is entirely legal in nature, and may be decided upon the Brief without oral argument. The state court lack of subject matter jurisdiction will be presented in the Brief.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit.

Respectfully submitted,



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9 January 2004

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

BILL J. CORY, Plaintiff-Appellant, v. DORIS FAHLSTROM; THOMAS M. TUGGLE, Judge; GUY R. STEIER; PATRIK W. NEUSTROM; SAMANTHA P. ANGELL; and DANA BREWER, Defendants-Appellees.	FILED United States Court of Appeals Tenth Circuit Nov 12, 2003 No. 03-3079 (D.C. No. 02-CV-1313-JTM) (D.Kan.)

ORDER AND JUDGMENT*

Before **TACHA**, Chief Circuit Judge, **MCKAY** and **McCONNELL**, Circuit Judges.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal.

See Fed. R. App.P. 34(a)(2); 10th cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. [1]

The present civil rights appeal involves two Kansas State court cases – a probate case and a related civil case filed against Appellant to recover assets of the estate. Appellant alleges that Appellees conspired to deny him due process and denied him due process in connection with these two cases. In two separate orders, the district court granted summary judgment for all Appellees, ruling that Appellant's attempt to obtain review of the judgments entered in the state court cases were barred by the *Rooker-Feldman* Doctrine.

We agree with the district court that Appellant's civil rights claims are barred by the *Rooker-Feldman* Doctrine. Pursuant to the *Rooker-Feldman* Doctrine, "[a] federal district court does not have the authority to review final judgments of a state court in judicial proceedings; such review may be had only in the United States Supreme Court." *Van Sickle v. Holloway*, 791 F.2d 1431, 1436 (10th Cir. 1986); see *also District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413 (1923). The *Rooker-Feldman* Doctrine also bars cases that are "inextricably intertwined: with prior state court decisions. *Feldman*, 460 U.S. at 486-87; *Van Sickle*, 791 F. 2d at 1436. This is true even when "those challenges allege that the state court's action was unconstitutional." *Van Sickle*, 791 F.2d at 1436 (quoting Feldman, 460 U.S. at 486).

Appellant's claims all arise from the prior Kansas State court proceedings or are inextricably intertwined with those proceedings. Therefore, after a thorough review of the

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[1] This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of the 10th Cir. R. 36.3.

briefs and the record, and for substantially the same reasons set forth in the district court's well-reasoned orders, we hold that no relief is available to Appellant.

AFFIRMED.

Entered for the Court

Monroe G. McKay
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BILL J. CORY, Plaintiff, vs. DORIS FAHLSTROM, THOMAS M. TUGGLE, JUDGE, GUY R. STEIER, PATRIK W. NEUSTROM, SAMANTHA P. ANGELL, And DANA BREWER, Defendants.	No. 02-1313-JTM

MEMORANDUM AND ORDER

This matter is before the court on the motion for summary judgment of defendant Doris Fahlstrom. The court has previously granted summary judgment in favor of the defendants in the action, pursuant to the *Rooker-Feldman* doctrine. The court incorporates the findings and rulings from that decision herein, and finds that the doctrine also supports granting summary judgment in favor of defendant Fahlstrom.

Summary judgment is proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

Fed.R.Civ.P. 56(c). In considering a motion for summary judgment, the court must examine all evidence in a light most favorable to the opposing party. *McKenzie v. Mercy Hospital*, 854 F.2d 365, 367 (10th Cir. 1988). The party moving for summary judgment must demonstrate its entitlement to summary judgment beyond a reasonable doubt. *Ellis v. El Paso Natural Gas Co.*, 754 F.2d 884, 885 (10th Cir. 1985). The moving party need not disprove plaintiff's claim; it need only establish that the factual allegations have no legal significance. *Dayton Hudson Corp. v. Macerich Real Estate Co.*, 812 F.2d 1319, 1323 (10th Cir. 1987).

In resisting a motion for summary judgment, the opposing party may not rely upon more allegations or denials contained in its pleadings or briefs. Rather, the nonmoving party must come forward with specific facts showing the presence of a genuine issue of material fact for trial and significant probative evidence supporting the allegation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,256(1986). Once the moving party has carried its burden under Rule 56 (c), the party opposing summary judgement must do more than simply show there is some metaphysical doubt as to the material facts. "In the language of the Rule, the nonmoving party must come forward with 'specific facts showing that there is a **genuine issue for trial.**'" *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)) (emphasis in Matsushita). One of the principal purposes of the summary judgement rule is to isolate and dispose of factually unsupported claims or defenses, and the rule should be interpreted in a way that allows it to accomplish this purpose. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

Plaintiff Cory has filed a response to Fahlstrom's motion, but he does not submit any sworn fact statement

which would controvert the evidence submitted either by Fahlstrom, or previously by the other defendants in their respective motions, That evidence establishes that, on February 2, 1999, Doris Fahlstrom filed a petition in th District Court of Cloud County, Kansas requesting the admission for probate of the Last Will and Testament of Madeline Young. The will was admitted to probate on November 8, 1998 and Fahlstrom was named executrix. On January 19, 2000, Fahlstrom, on behalf of the Estate of Madeline Young, filed a lawsuit in Cloud County, Kansas District Court to recover assets of the estate from plaintiff Cory. On July 28, 2000, she filed a motion for default judgment. The court granted the motion and entered judgement against Cory and co-defendant Arden Krohn for $780,273.00, plus interest.

Cory and Krohn filed an appeal from the judgment on September 25, 2000. On November 8, 2000, both Cory and Krohn accepted and signed a settlement agreement under which the previous judgment amount was reduced to $400,000.00 in exchange for which Cory and Krohn would dismiss their appeal, and Cory agreed to release Fahlstrom from any claims against her. The district court conducted a hearing on November 17, 2000, and approved the settlement.

Cory's argument against the application of the Rooker-Feldman doctrine is that he was not personally served with process in the state action, and thus was never a party. While this is a correct general statement of the law, *see Johnson v. De Grandy*, 512 U.S. 997, 1006 (1994); *Valenti v. Mitchell*, 962 F. 2d 288, 298 (3d Cir. 1992) it has no application here under the facts of this case.

The evidence establishes that, however much plaintiff may repeat his argument that he was not a "party" to the state court action, he unquestionably became an active litigant there, and the *Rooker-Feldman* doctrine is therefore applicable. As noted earlier, it is uncontroverted that Cory

participated in the state action; his own Complaint explicitly acknowledges (1) that the state court twice found that it had jurisdiction and that service of process had been properly achieved (Complaint, at ¶ 12, 15); (2) that the state court entered judgment against Cory *(Id.,* at ¶ 15), (3) that Cory filed at least two motions (seeking recusal of the judge, whom Cory alleges has been in conspiracy with the state court plaintiff) in the state action (*Id.,* at ¶ 18, 19), (4) that Cory filed a Notice of Appeal of the state district court decision with the Kansas Court of Appeals, along with a Motion to Determine Bond and a Motion for Relief from Default Judgment (*Id.,* at ¶ 21), (5) that Cory filed a Petition for Mandamus with the Kansas Supreme Court (Id.); that the state district court ordered Cory to show cause why he should not be held in contempt (*Id.,* at ¶ 22); and (6) that a settlement was approved by the court (*Id.,* at ¶ 23). The order incorporating the settlement agreement has been submitted to this court, an order signed by Cory as "Defendant," in addition to the signatures of co-defendant Arden Krohn and by the defendants' attorney. (Dkt. No. 27, Exh. A.) After this order, the defendant's counsel also submitted a Stipulated Voluntary Dismissal with the Kansas Court of Appeals in Case No. 00-85983-A (*Id.,* Exh, C) which sets forth the general settlement.

Cory repeatedly and actively participated in the state court proceedings he now challenges, and there is no reason he could not have advanced his current arguments therein. As the principles underlying the Rooker-Feldman doctrine are certainly applicable here, the doctrine itself should also here be given force and effect.

The court notes that this motion was submitted under an expedited briefing schedule with the consent of all parties, and allowed plaintiff Cory to incorporate all arguments he had previously raised in opposition to the other defendants' respective motions for summary judgment, and allowed defendant Fahlstrom to incorporate

all arguments made by the other defendants in their respective summary judgment motions, Both plaintiff and defendant Fahlstrom were allowed to submit additional factual assertions germane to the motion decided today.

IT IS ACCORDINGLY ORDERED this 3d day of April, 2003, that defendant Fahlstrom's Motion for Summary Judgment (Dkt. No. 68) is hereby granted.

s/J. Thomas Marten
J. THOMAS MARTEN, JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BILL J. CORY, Plaintiff, vs. DORIS FAHLSTROM, THOMAS M. TUGGLE, JUDGE, GUY R. STEIER, PATRIK W. NEUSTROM, SAMANTHA P. ANGELL, And DANA BREWER, Defendants.	Filed U.S. District Court District of Kansas Feb 11, 2003 No. 02-1313-JTM

MEMORANDUM AND ORDER

The present action arises from a will contested in Kansas state court. Defendant Doris Fahlstrom, as executrix of the Estate of Madaline Young, brought the litigation, Case Nos. 99-PR-09 and 00-C-02, in Cloud County, Kansas. Defendant Judge Thomas Tuggle, Chief Judge of the Kansas Twelfth Judicial District, presided over the action. Defendants Dana Brewer, Guy Steier, Patrik Neustrom, and Samantha Angell represented Fahlstrom during the course of the proceeding. Plaintiff Bill Cory was a party to the litigation. Cory moved to dismiss the action on the grounds that he was not properly served The motion was dismissed by the court, and ultimately a default judgment was entered against Cory and anther defendant in the action. The

defendants filed a notice of appeal, but this was dismissed when the parties settled the proceeding, the settlement being formally approved before the court on November 17, 2000.

In the present action, Cory has advanced various constitutional claims against Fahlstrom, the attorneys, and Judge Tuggle. Motions for summary judgment are before the court on behalf of both plaintiff and defendants. In addition, Cory has moved for default judgment against Fahlstrom. For the reasons stated herein, the court will grant the defendants' motions for summary judgment.

Summary judgment is proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56 (c). In considering a motion for summary judgment, the court must examine all evidence in a light most favorable to the opposing party. *McKenzie v. Mercy Hospital,* 854 F. 2d 365, 367 (10th Cir. 1988). The party moving for summary judgment must demonstrate its entitlement to summary judgment beyond a reasonable doubt. *Ellis v. El Paso Natural Gas Co.,* 754 F. 2d 884, 885 (10th Cir. 1985). The moving party need not disprove plaintiff's claim; it need only establish that the factual allegations have no legal significance. *Dayton Judson Corp. v. Macerich Real Estate Co.,* 812 F.2d 1319, 1323 (10th Cir. 1987).

In resisting a motion for summary judgment, the opposing party may not rely upon mere allegations or denials contained in its pleadings or briefs. Rather, the nonmoving party must come forward with specific facts showing the presence of a genuine issue of material fact for trial and significant probative evidence supporting the allegation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986). Once the moving party has arrived its burden under Rule 56 (c), the party opposing summary judgment

must do more than simply show there is some metaphysical doubt as to the material facts. "In the language of the Rule, the nonmoving party must come forward with 'specific facts showing that there is a **genuine issue for trial**.'" *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e))(emphasis in *Matsushita*). One of the principal purposes of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and the rule should be interpreted in a way that allows it to accomplish this purpose. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

Cory's responsive pleadings make no attempt to comply with D. Kan Rule 56.1 in form or substance; his pleadings do not set forth by numbered paragraphs those facts which are claimed to be specifically controverted or uncontroverted, nor are the assertions of fact based upon citations to the evidentiary record. His response to the initial summary judgement motion (Dkt. No. 39) contains no sworn factual statements. His pleadings are virtually all legal argument; what might be viewed as factual assertions in his pleadings are indiscriminately scattered throughout that lengthy argument. In a subsequent pleading (Dkt. No. 57 at 28 ¶ 42), Cory states that while he had "missed Local Rule 56," this was of no effect since he had submitted a "verified" pleading to the court.

A review of the court file fails to establish that Cory has advanced any averments of fact under oath. Moreover, many if not most of the various factual claims which have been advanced by Cory, such as those relating to various conspiratorial acts, appear to be matters which would not be within his own personal knowledge, a requirement of Rule 56. In any event, it is clear that, although he has been subsequently presented with the requirements of Rule 56.1 – in particular by the sharp objections by all of the defendants to his failure to comply with the rule – Cory has nonetheless done nothing to correct the deficiencies in any of his

pleadings by submitting a separate factual statement, tied by citation to admissible evidence. Nor has he attempted to meet the requirements of Rule 56.1 by specifically admitting or denying the factual statements of the defendants.

Accordingly, the facts submitted by defendants in Dkt. Nos. 27, 49, 54, and 56 are deemed admitted pursuant to D.Kan. Rule 56.1 and incorporated herein.

Turning to the various arguments advanced by the defendants, it is apparent that summary judgement is appropriate. Although the defendants advance various rationales for the dismissal of Cory's claims, one common thread to all of the defendants' motions is their contention that the court should not entertain the action pursuant to the *Rooker-Feldman* Doctine. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.* 263 U.S. 413 (1923).

> Under 28 U.S.C. § 1257, 'federal review of state court judgments can be obtained only in the United States Supreme Court." *Kiowa Indian Tribe of Okla.* V. Hoover, 150 F. 3d 1163, 1169 (10th Cir. 1998)(citing *Dist. Of Columbia ct. of App. V. Feldman,* 460 U.S. 462, 476, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)). As a result, the *Rooker-Feldman* doctrine prohibits a lower federal court from considering cliams actually decided by a state court, *Rooker v. Fid. Trust Co*, 263 U.S. 413, 415-16, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and claims "inextricably intertwined" with a prior state court judgment. *Feldman,* 460 U.s. at 483 n.16, 103 S.Ct. 1303. In other words, *Rooker-Feldman* precludes a "party losing in state court... from seeking what in substance would be appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state

> judgement itself violates the loser's federal rights." *Johnson v. DeGrandy*, 512 U.S. 997, 1005-06, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994).

This court has previously applied the doctrine in an action similar in key respects to the present action. See Hall v. Martin, No. 99-1092-JTM, 2001 WL 946179 (D. Kan. July 18, 2001)(finding Rooker-Feldman Doctrine barred an action by a dissatisfied probate claimant "following prior, unsuccessful state court litigation: against the beneficiaries of the estate, their attorneys, and her own attorneys).

Further, in his responsive pleadings, Cory simply restates his various theories of conspiracy, fraud, corruption and coercion. He stresses the history of his family (the plaintiff's "great-grandfather was the first taxpayer in Republic County, assisting in organizing the county and the Salt Creek Militia, in which he served, to fight the Indians"), coupled with the story of how he successfully fought a speeding ticket in Missouri (Dkt. No. 57, at 3-4,10). He stresses his own "good character and high morals." (id. At 10). He asks for modification of the Kansas attachment statute (Dkt. No. 57, at 7, 25). He asks that the Kansas Attorney General remove Judge Tuggle from office. (Id. At 26). What plaintiff utterly fails to do in any of his pleadings is to offer any response as to why Rooker-Feldman is not applicable here.

Accordingly, the court will grant the defendants' motion for summary judgment. The court will deny plaintiff's motion for summary judgment in light of the present holding. Plaintiff's motion for default judgment, which cites Fahlstrom's failure to respond to his summary judgment motion and which also cites Fed. R. Civ. Pr. 55(b) and 54 (C0 is denied. First, as noted earlier, Cory's motion for summary judgment fails in every important respect to meet the standards set forth by D.Kan Rule 56.1; it is denied

on those grounds. Second, Fahlstrom has recently filed answer in the case (Dkt. No. 30), and there is no basis for concluding that Fahlstrom "has failed to plead or otherwise defend" the action within the meaning of either Rule 55 or Rule 54.

IT IS ACCORDINGLY ORDERED this 11th day of February, 2003, that the defendants' summary judgment motions (Dkt. Nos. 26, 48, 53, 55) ARE GRANTED; PLAINTIFF'S motions for summary judgment and default (Dkt. Nos. 39, 57) are denied.

s/J. Thomas Marten
J. THOMAS MARTEN, Judge

APPENDIX C

Federal Statutory Provisions Involved
Title 42 U.S.C § 1983

§ 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or to other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

State of Kansas Statutory Provision Involved
In pertinent part:

K.S.A. 60-302
§ 60-302. Summons; Form

The summons shall be signed by the clerk, dated the day it is issued, be under the seal of the court and shall be in substantial conformity with the forms for summons contained in the appendix of forms following K.S.A. 60-269.

§ 60-303. Methods of Service of Process

(a) Methods of service of process within this state, except service by publication as provided in K.S.A. 60-307, amendments thereto, are described in this section. Methods of out-of-state service of process are described in K.S.A. 60-308, and amendments thereto.

(b) Service by Certified Mail. Except if the attorney for the party or the party, if the party is not represented by an attorney, requests personal or residence service pursuant to subsection (c); if the attorney or the party requesting service elects to serve process by certified mail pursuant to this subsection; as provided in K.S.A. 60-903, 60-2401 or 60-3104, and amendments thereto; or as otherwise provided by law, the sheriff of the county wherein the action is filed shall serve any process by certified mail, evidenced by return receipt signed by any person or by restricted delivery, unless otherwise permitted by this article. The sheriff, attorney for the party seeking service or the party, if the party is not represented by an attorney, shall cause a copy of the process and petition or other document to be placed in an envelope addressed to the person to be served in accordance with K.S.A. 60-304, and amendments thereto, adequate postage to be affixed and the sealed envelope to be placed in the United States mail as certified mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. The sheriff, party's attorney or the party, if the party is not represented by an

attorney, shall execute a return on service stating the nature of the process, the date on which the process was mailed, and the name and address on the envelope containing the process mailed as certified mail return receipt requested. The sheriff, party or the party's attorney shall file the return on service and the return receipt or return envelope in the records of the action. Service of process shall be considered obtained under K.S.A. 60-203, and amendments thereto, upon the delivery of the certified mail envelope. If the certified mail envelope is returned with an endorsement showing refusal of delivery, the sheriff, serving party or the party's attorney shall send a copy of the process and petition or other document to be served to the defendant by ordinary, first-class mail. The mailing shall be evidenced by a certificate of mailing which shall be filed with the clerk. Service shall be considered obtained upon the mailing by ordinary, first-class mail. Failure to claim certified mail service is not refusal of service within the meaning of this subsection.

(c) Personal and Residence Service.

(1) When the plaintiff files a written request with the clerk for service other than by certified mail, service of process shall be made by personal or residence service. Personal service shall by made by delivering or offering to delivery a copy of the process and accompanying documents to the person to be served. Residence service shall be made by leaving a copy of the process and petition, or other document to be served, at the dwelling house or usual place of abode of the person be served with some person of suitable age and discretion residing therein. If service

cannot be made upon an individual, other than a minor or a disabled person, by personal or residence service, service may be made by leaving a copy of the process and petition, or other document to be served, at the defendant's dwelling or usual place of abode and mailing a notice that such copy has been left at such house or place of abode to the individual by first-class mail.

§ 60-304. Service of Process, on Whom Made

As used in this section, "serving" means making service by any of the methods described in K.S.A. 60-303, and amendments thereto, unless a specific method of making service is prescribed in this section. Except for service by publication under K.S.A. 60-307, and amendments thereto, service of process under this article shall be made as follows:

(a) Individual. Upon an individual other than a minor or a disabled person, by serving the individual or by serving an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given. Service by certified mail shall be addressed to an individual at the individual's dwelling house or usual place of abode and to an authorized agent at the agent's usual or designated address. If service by certified mail to the individual's dwelling house or usual place of abode is refused or unclaimed, the sheriff, party or party's attorney seeking service may complete service by certified mail, restricted delivery, by serving the individual at a business address after filing a return on service stating the certified mailing to the individual at such individual's dwelling house or usual place of abode has been refused or unclaimed and a business address is known for such individual.

§ 60-308. Service Outside State

(a) **Proof and Effect.**

(1) Service of process may be made upon any party outside the state. If upon a person domiciled in this state or upon a person who has submitted to the jurisdiction of the courts of this state, it shall have the force and effect of service of process within this state; otherwise it shall have the force and effect of service by publication.

(2) The service of process shall be made (A) in the same manner as service within this state, by any officer authorized to make service of process in this state or in the state where the defendant is served or (B) by sending a copy of the process and of the petition or other document to the person to be served in the manner provided in subsection (e). No order of a court is required. An affidavit, or any other competent proofs, of the server shall be filed stating the time, manner and place of service. The court may consider the affidavit, or any other competent proofs, in determining whether service has been properly made.

§ 60-312. Proof of Service.

Proof of service shall be made as follows:

(a) Personal and Residence Service.

(1) Every officer to whom summons or other process shall be delivered for service within or without the state, shall make a statement subject to penalty of perjury as provided in K.S.A. 21-3805 and amendments thereto as to the time, place and manner of service of such writ.

(2) If service of such process is directed to and delivered to a person, other than an officer, for service, such person shall make affidavit as to

the time, place and manner of such person's service thereof.

(b) **Service by Certified Mail**. Service by certified mail shall be proven in the manner provided by subsection (b) of K.S.A. 60-303 or subsection (e) of K.S.A. 60-308, and amendments thereto.